

1809324 (Migration) [2018] AATA 3692 (30 August 2018)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1809324
MEMBER:	Margie Bourke
DATE:	30 August 2018
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the applications for Partner (Temporary) (Class UK) visas for reconsideration, with the direction that the applicants meet the following criteria for Subclass 820 (Spouse) visas: • Public Interest Criterion 4020 for the purposes of cl.820.226 of Schedule 2 to the Regulations.

Statement made on 30 August 2018 at 3:32pm

CATCHWORDS

Migration – Partner (Temporary) (Class UK) – Subclass 820 (Spouse) – Misleading information – Department home visit – Attempt to conceal the identity of first husband in photographs with son – False information knowingly provided to Departmental officers – Information not material to whether the applicant is in a genuine relationship with the sponsor – Decision under review remitted for reconsideration

LEGISLATION

Migration Act 1958 (Cth), ss 5, 65, 359AA, 376, 375A
Migration Regulations 1994 (Cth), Schedule 2, cl 820.226, Schedule 4, Criteria 4020

CASES

Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Trivedi v MIBP [2014] FCAFC 42
Sharma v MIMAC [2013] FCCA 1280

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information

The Tribunal directs that information that would identify the applicant (including information about family, friends or associates) not be published (under s.378 of the *Migration Act 1958*). This means that if this decision is published, names and other identifying material must be removed from or modified in the published version of the decision.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Immigration on 26 March 2018 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
4. The applicants applied for the visas on 18 June 2014. The delegate refused to grant the visas on the basis that the first named applicant (the applicant) did not satisfy the requirements of cl.820.226 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the delegate was not satisfied the applicants met the requirements of Public Interest Criterion (PIC) 4020.
5. The first named applicant, [appeared] before the tribunal on 23 July 2018 to give evidence and present arguments. The second named applicant, a [age] year old child, did not attend the hearing. The tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
6. The applicants were represented in relation to the review by their registered migration agent. The representative attended the tribunal hearing.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. Preliminary Issues

9. *Application for Postponement of the Hearing*

10. The tribunal received a telephone call from the representative at 4pm on Thursday 19 July 2018, advising that the first named visa applicant had advised him that there were issues of domestic violence and the sponsor would not be attending the hearing scheduled for the next Monday. The representative also advised the requested Italian interpreter would not be required for the hearing scheduled for the next Monday.
11. The representative then sent an email to the tribunal confirming the sponsor would not be attending, and the Italian interpreter would not be required. The representative also submitted that [the first named applicant] sought to have the hearing postponed in order to provide all the evidence, and that the representative would be grateful for extra time.
12. I decided to discuss the request for postponement at the commencement of the hearing, to ascertain the relevance of the further evidence the first named visa applicant wished to obtain, to the issue of meeting the requirements of PIC 4020. The hearing commenced as scheduled, and the discussion about whether the review should proceed or be postponed is recorded further on in this decision record.
13. *S.376 and s.375A certificates*
14. There were two certificates on the Department file [number]. There were no certificates on the 2014 Department file which had also been provided to the tribunal. The applicants' representative advised he had sought and been provided with disclosure from the Department.

15. By letter dated 13 June 2018, the tribunal provided the representative and the applicants with copies of both certificates, and invited them to provide written submissions in relation to the validity of the certificates. No submissions were received in relation to the validity of the certificates. The representative advised the tribunal he did not intend to make any submission in relation to the validity of the certificates in the hearing.
16. I advised the representative and the first named visa applicant that the s.376 certificate related to printout information concerning another person. The certificate recorded the information was given to the Department in confidence. The specified folios 85 to 88 are poorly marked, but I am satisfied they are filed in numerical order. The printout information appears to be Departmental information, and the first folio has "previous partner" written on it. I assume the information was placed on the applicants' file in confidence. I am satisfied of two essential points. The information relates to a person other than the applicants, and the information on the printout sheets is not relevant to this decision. For these reasons, I have decided the certificate is valid, and I have not released the information. I have not considered the information in folios 85 to 88 as relevant to this review, or as relevant to any assessment in making the findings in this decision record.
17. The s.375A certificate related to three groups of folios, 89, 108 to 110, and 119 to 124. The certificate recorded that disclosure would be contrary to the public interest because it would expose Departmental investigative methods and processes to the general public. I have considered that in usual circumstances this may not be a valid reason to engage s.375A. However, the representative indicated that many of the folios had been substantially disclosed, including facebook pages and photographs from the recorded folios, by the Department, with only small parts redacted. Part of the information that was not disclosed was standard checklists and cover sheets which were not relevant to the individual review. The other information that was not disclosed was the address of the other person, photos of the other person's house, a map of the route between the applicants' house and the other person's house, and a proposition that the first named applicant had resumed her relationship with her previous husband. As I was not aware of the actual relationship between the first named applicant, and her previous husband, I decided that the disclosure of her previous husband's address and the photo of his house and route to this house should not be disclosed as it was contrary to the public interest as part of the Department's investigative processes. I did put the gist of the information – the fact the information contained her previous husband's address, and that the purpose of the home visit by the Department was because they suspected the first named applicant had resumed her relationship with her first husband – to the first named visa applicant pursuant to s.359AA in the hearing. I will discuss this later in this decision record.
18. Therefore I found that the certificate was valid on this occasion, although the reason for non-disclosure was that it would expose Departmental investigative processes and methods, which is not usually a sufficient reason on its own. I am satisfied that some of the information in the recorded folios had already been provided to the applicants by the Department. I am satisfied some of the information is not relevant. I provided the gist of the remaining information to the first named applicant pursuant to s.359AA in the hearing.

19. **The main Issue of PIC 4020**

20. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl.820.226 for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or

misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and

- the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
- the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

21. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

22. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s.5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
23. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
24. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
25. In the Department's decision record dated 26 March 2018, the delegate found the first named visa applicant had provided false and misleading information in a material particular in relation to the first named visa applicant's partner visa application, namely that she and her sponsor were not in a genuine and continuing relationship. The delegate recorded that during the Departmental home site visit the first name visa applicant had attempted to conceal the identity of her first husband pictured in photographs with her son, and stated the man was her cousin, '[Mr A]'.

26. In the Department's decision record dated 26 March 2018, a copy of which was provided to the tribunal by the first named applicant, the delegate recorded that the first named applicant claimed that a resident at her nominated address was her cousin. The delegate recorded the first named applicant stated this cousin was the adult male in the photographs with her son, found on the fridge in the home. The delegate recorded that the first named applicant could not explain why this person she described as her cousin was referred to as her Valentine on her social media, and that the person with the same features as the person that the first named applicant had said was her cousin openly referred to the first named applicant's son as his son on his social media. The delegate records that the Department officer conducted checks and assessed from his own immigration file that the first named applicant's previous partner was in fact the person described in the photograph by the first named applicant as her cousin, '[Mr A]'.
27. The false and misleading information referred to in the Department decision record is the false identification of the adult male as her cousin in the photographs with her son at the time of the home site visit; the Department officers became suspicious because of the reference to this person by the first named applicant as her Valentine on her social media, which she could not explain to them, and the Department officers were able to correctly identify the adult male in the photographs as the child's biological father and the first named applicant's previous partner.
28. In the psychological report dated 23 July 2018 from [Mr B] and submitted to the tribunal that day, the day of the hearing, the psychologist refers to an earlier psychological report of [the first named applicant]. The report dated 23 July 2018 states that the first named visa applicant developed symptoms which *"impacted upon her judgment and impulse control and by her account it was primarily in this context that she provided falsely misleading information to an Immigration Officer who attended her home on 23 January 2018. I note that on that occasion when presented with material she advised that it was a photograph of her cousin and not her former first husband."*
29. I asked the first named visa applicant and her representative if it was agreed that the first name visa applicant had provided false or misleading information. I read the above part from the psychological report provided to the tribunal. I offered to adjourn the hearing temporarily to allow the matter to be discussed. The representative and the first named visa applicant both indicated the issue had been canvassed between them and no further discussion was necessary. The representative and the first named visa applicant both advised the tribunal that it was conceded that the first named visa applicant had provided false and misleading information to the Department.
30. The first named visa applicant stated that she had panicked and identified the man in the photos with her son which were on the fridge, as her cousin. She stated she knew the person in the photograph was the child's father.
31. In the Department's decision record the delegate concludes that based on the information above, (the first named applicant's false and misleading information that the man in the photograph was her cousin, [Mr A], and her consequent inability to explain why her cousin was referred to her as her Valentine on social media), that the first named applicant had therefore remained in a relationship with her ex partner, the father of the child and that she had attempted to conceal his identity from the Department by claiming that he was her cousin.
32. I discussed with the first named visa applicant that the false or misleading information needed to be in relation to a material particular in relation to the application for the visa or visa the applicant held in the period of 12 months before the application for the visa was made. I discussed that the false or misleading information needed to be in relation to a

material particular that was relevant to the visa application. I had concerns that the identity of the person in the photo with her son *on its own* may not amount to a material particular. I had concerns that the identity of the male in the photographs, and the false identification of the male in the photographs may not be a material particular that led to the delegate's conclusion that the first named applicant and the sponsor were not in a genuine and continuing relationship. I discussed that the identity or claimed identity of the person in the photograph with her son may not necessarily be false or misleading information for the purpose of PIC 4020.

33. I discussed that the Department were suspicious that the first named visa applicant was in an ongoing relationship with her previous husband and not the sponsor, and the false identity she gave of the person in the photo was an indication of this. I put the adverse information from the folios in the s.375A certificate to the first named visa applicant pursuant to s.359AA, in relation to the Department arranging the home visit. I considered this information was adverse information and relevant to the review because it seemed to be part of the delegate's process of finding the false and misleading information was a material particular to the visa criterion. The delegate had concluded after the first named applicant had stated the false or misleading information of the identity of the adult male in the photographs that the first named visa applicant had resumed her relationship with her previous husband. The other observations of the Departmental officers at the time of the home site visit must be relevant to this conclusion of the delegate, and in fairness needed to be put to the first named applicant so she had an opportunity to comment and respond. The information included that the previous partner's address, that it was an address recorded as close to the first named applicant's house, and the Department had conducted the home site visit because it suspected the first named applicant had resumed her relationship with her previous partner. I explained the relevance and consequences of the information for the review, and allowed the first named visa applicant the opportunity to have an adjournment and discuss the matter with her representative. In response the first named visa applicant chose to submit a prepared typed statement, (an unsworn statutory declaration) which set out that she had been in a relationship with the sponsor at the time of the home visit, and until July 2018, when the sponsor ended the relationship.
34. I allowed the first named visa applicant a period of time after the hearing to provide further information which would support her claim that she was in a relationship with the sponsor at the time of the home visit, and to provide any submissions that the false or misleading information she had provided about the identity of the person in the photos may not have been in relation to a material particular relevant to the application for the visa.
35. I also sent information from documents which were not subject to non-disclosure certificates and therefore had been provided to the applicants and the representative previously pursuant to s.359A after the hearing. This was not discussed in the hearing, and I thought it fair and proper to put it to the first named visa applicant after the hearing. This information was relevant in my view to the reason the delegate had relied on the information that the first named applicant had given the false or misleading information in relation to the identity of the man in the photographs, was in relation to a material particular to the application for the visa, and proceeded to conclude that the first named applicant was in an ongoing relationship with her ex partner and not with the sponsor at the time of the home visit. This information related to conclusions from the home visit that the first named visa applicant was not in a relationship with the sponsor for the following reasons:-
 - (i) none of the sponsor's personal papers, work clothes, payslips or personal items were in the house;
 36. (ii) the first named visa applicant did not know the sponsor's mother's name or address, or the sponsor's brothers' names or their addresses, and she could not identify

them in photos; and she did not know the name of his employer, and had not met any of his work colleagues;

37. (iii) the clothes for a male in the bedroom the first named visa applicant stated she shared with the sponsor were too small for the sponsor but appeared to be the correct size for the first named visa applicant's previous husband;

38. (iv) on the first named visa applicant's facebook profile, a photo of her 'Valentine' is a photo of the first named previous husband, whom the first named visa applicant stated was were cousin and not the father of her child; and on the fridge were several photos of the first named visa applicant's son and previous husband together, and again the first named visa applicant stated this was her cousin with her son;

39. (v) there were no photos of the sponsor on the first named visa applicant's phone or facebook page; the first named visa applicant was not facebook friends with the sponsor and there was minimul communication on first named visa applicant's phone with the sponsor; and

40. (vi) the visiting officers concluded that the sponsor did not live at the residence, and that the first named visa applicant's previous husband did reside at the home.

41. After the hearing the tribunal receives a notice that the first named applicant had appointed a new representative. The tribunal received extensive submissions and responses to invitation to comment or respond from the new representative.

42. I have considered the submission that the first named applicant was in a state of emotional flux at the time of the home visit from the Department. I have considered the psychological report provided in support of this submission and the statutory declaration of the first named applicant. I accept the findings of psychologist Mr [B] in his report dated 23 July 2018, that the first named applicant is suffering from a depressive disorder which requires treatment. I have considered the report of the psychologist Mr [B] dated 16 August 2018 that at the time of the home visit from the Department officers the first named applicant reported that she was in a state of emotional flux. I note the wording of the report is that the first named applicant "reported" she was in a state of emotional flux, rather than the psychologist stating his opinion that this was the case. I have considered the report dated 23 July refers to the previous psychological report of [the first named applicant], and I accept the first named applicant has suffered a form of depression for some time. I have considered the suggestion that the first named applicant's condition affected her judgment and impulse control. I accept that the first named applicant expressed deep regret for her actions in that she provided falsely misleading information to an immigration officer who attended her home on 23 January 2018 when she advised that the photographs of her son and an adult man on her fridge were photographs of her son with her cousin. I have considered the statement of the named applicant in a statutory declaration dated 8 August 2018 that she was very scared and confused during the site visit. I accept that in providing the false identification of the male in the photographs, which was so soon established as false identification, the first named applicant exercised poor judgment.

43. I have carefully considered all the evidence before me in relation to the false or misleading information provided by the review applicant about the identity of the man in the photographs at the home site visit on 23 January 2018. I am satisfied that the first named applicant provided false or misleading information for a purpose to avoid the Department officers ascertaining the person in the photograph was in fact her previous partner. I accept that false information about the identity of the person was a statement made by the first named applicant when she was feeling under pressure. I also accept that the first named applicant has suffered depression for some time. There is no evidence before me that the first named

applicant is a compulsive liar, or has symptoms that mean she cannot control the truthfulness of her answers. I do not accept that her psychological condition caused her to provide the false or misleading information to the Departmental officers.

44. I am satisfied that it was a false statement made by her, for a self interested purpose, possibly to protect her visa status and her potential migration outcome. I am satisfied that the first named applicant acted and spoke with an element of fraud and deception. I am satisfied that the first named applicant stated the person in the photograph was her cousin, and she was aware that this statement was purposefully false. I am satisfied the first named applicant was not truthful, and that this false information cannot be excused or completely explained by virtue of the fact that she was under pressure and suffered from a psychological condition. I am not satisfied that the false information in relation to the identity of the man in the photograph was an innocent mistake on behalf of the first named applicant. I am satisfied after considering all the information available to me that the false information was given by the first named applicant knowingly to the Departmental officers.
45. However as I discussed with the first named applicant in the hearing I have concerns about whether the identification of the man in the photograph amounted to false or misleading information as to a material particular in relation to the application for the visa or a visa that the applicant held in the period of 12 months before the application was made. I am not satisfied that because the first named applicant had a photograph on the fridge of the child with his biological father, and is not truthful about the identity of the person, that there can be an assumption that the first named applicant has resumed a relationship with the child's father, her previous partner.
46. I invited the first named applicant to comment on the other information obtained by the Department officers at the home site visit, which seemed to have led the Department officers to the conclusion that the first named applicant was not in an ongoing relationship with the sponsor, but had remained in a relationship with her ex partner, the father of the child which was the reason she had attempted to conceal his identity. The delegate has relied on the false or misleading information to then make findings in relation to whether the first named applicant is in a genuine ongoing relationship with the sponsor. I am not convinced that the false information of the identification of the male in the photograph is sufficient evidence to make findings in relation to the genuineness of the first named applicant's relationship with the sponsor. This requires an assessment of different criteria and an assessment of the circumstances of that relationship.
47. I have considered that false or misleading information in a material particular is identified in PIC 4020(5) as (a) false or misleading at the time it is given; and (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information. I have considered whether the identity of a person in a photograph with the first named applicant's child is a material particular within this definition. I have considered whether the fact the child is photographed with his biological father is a material particular within this definition.
48. Firstly I am satisfied the information that the identity of the male was false or misleading information at the time it was given. The male was not the first named applicant's cousin at the time, or at any time. The information provided by the first named applicant was false and misleading when it was given to the Department officers at the time of the home visit on 23 January 2018. Therefore the information was false or misleading within the meaning of PIC 4020(5)(a).
49. Secondly I have considered whether the false or misleading information is relevant to the criteria for the visa. In particular, I have considered whether the first named applicant is in a genuine and continuing relationship with the sponsor, as this is the criterion the delegate

found the false or misleading information was relevant to as a material particular. I have considered the submissions provided by the representative in relation to this point. I have considered the case of *Sharma v MIMAC [2013] FCCA 1280*, where the judgment at paragraph 43 describes the consideration of the material before the tribunal as to whether it is sufficiently probative to lead to relevant conclusions. In the conclusion of the judgement the phrase whether “the material before it was sufficiently probative” to lead to the conclusion that the information contained a statement that was false or misleading in a material particular, is repeated. I have considered whether the identity of the person in the photographs with the first named applicant’s child in her home is sufficiently probative as a material particular, and further whether the first named applicant’s false information about the identity of the person in the photographs is sufficiently probative as a material particular.

50. I am not satisfied that the false or misleading information provided by the first named applicant in relation to the identity of the person in the photographs is sufficiently probative as a material particular relevant to the application for the visa or visa that the first named applicant held in the period of 12 months before the application was made. I am not satisfied that the fact the first named applicant’s child is in a photograph with his biological father, necessarily leads to the conclusion that the first named applicant is not in an ongoing and genuine relationship with the sponsor. The possibility that the first named applicant has resumed contact with their previous partner and that he has contact with his son does not necessarily mean the decision maker can conclude that the first named applicant is not in an ongoing genuine relationship with the sponsor. The fact that the first named applicant gave false or misleading information about the identity of her previous partner in the photograph is suggestive only. The information is not in relation to a material particular, and it is not sufficiently probative to conclude that the first named applicant is not in an ongoing and genuine relationship with the sponsor.
51. I have considered that the delegate in the Department’s decision record has looked at other issues in relation to the first named applicant’s previous partner on her social media. I have considered that the first named applicant is recorded as referring to her previous partner as her Valentine on social media. I accept that the previous partner openly refers to his son as his son, but do not find that this indicates the first named applicant is not in an ongoing relationship with the sponsor. I provided the other information from the conclusions of the Department home site visit on 23 January 2018 and invited the first named applicant to comment to this adverse information as the information may have been relevant to the review if the tribunal relied on the information to conclude that the first named applicant was not in a genuine relationship with the sponsor and had provided false information to the Department in a material particular. I have read the responses from the first named applicant’s representative.
52. I accept that if the false or misleading information leads to the conclusion that the first named applicant is not in a genuine and continuing relationship with the sponsor, that the false or misleading information is information that is false or misleading in a material particular in relation to the application for the visa. However, if the false or misleading information is not relevant to, and does not lead to the conclusion that the first named applicant is not in a genuine and continuing relationship with the sponsor, then the false and misleading information is not false or misleading information in a material particular in relation to the application for the visa.
53. It is clear from the Department file, that the Department officers observed things and obtained information that indicated to the Department officers that the first named applicant and the sponsor were not in an ongoing and genuine relationship. This information has fairly been put to the first named applicant by the tribunal. However, the tribunal has noted that the information and observations that were recorded in the Department’s decision record were limited to the first named applicant giving false and misleading information about the identity

of the adult male in the photographs with her son. The tribunal accepts the first named applicant was knowingly deceitful in providing this false identity. The tribunal accepts that this indicated to the Department officers there may be something suspicious about the first named applicant's claimed relationship with the sponsor, or alternatively about the possibility of a renewed relationship between the first named applicant and her previous partner.

54. However, the tribunal is of the opinion, that the false or misleading statement about the identity of the male in the photograph is not information about a material particular relevant to a visa criterion for the genuineness of the relationship, and is not sufficiently probative to be considered information as to a material particular for other criteria for the genuineness of the relationship with the sponsor, and therefore for the granting of the subclass 820 visa. For these reasons, I am not satisfied that the false information, although knowingly made by the first named applicant, is not information about a material particular, and the false or misleading information in this matter does not meet the definition in PIC 4020(5)(b).
55. I wish to clarify that I am not making any findings in relation to whether the first named applicant and sponsor are in a genuine and ongoing relationship either at the time of the Department home visit or at the time of this decision.
56. I am satisfied that the first named applicant knowingly provided false or misleading information to the Department. I am not satisfied that that information amounts to information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the period of 12 months before the application was made.
57. For these reasons the tribunal is not satisfied that there is evidence before the tribunal that the first named applicant has given or caused to be given to the Minister, and officer, the tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular.
58. There is no evidence before the tribunal that the second named applicant has provided false or misleading information, or provided a bogus document within the meaning of PIC 4020(1).
59. For these reasons I am not satisfied that PIC 4020 (1) is engaged.
60. Therefore, the applicants meet PIC 4020(1).
- 61.

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

62. PIC 4020(2) requires the Tribunal to be satisfied that the applicants and each member of their family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).
63. There is no evidence before me that the applicants and each member of their family unit have been refused a visa because of a failure to satisfy PIC 4020(1) in the period three years before the application was made. Therefore, the applicants meet the requirements of PIC 4020(2).

Have the applicants satisfied the identity requirements?

64. PIC 4020(2A) requires an applicant satisfy the tribunal as to his or her identity. There is no evidence before the tribunal that the applicants do not satisfy the identity requirements. The Department file includes details in relation to the applicants' identity.
65. Therefore, based on the information available to the tribunal the applicants meet the requirements PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

66. PIC 4020(2B) requires that neither the applicants nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).
67. There is no information available to the tribunal that the applicants or any member of their family unit have been refused to visa because of a failure to satisfy PIC 4020(2A). Therefore the applicants meet the requirements of PIC 4020(2B).
68. On the basis of the above, the applicants satisfy PIC 4020 for the purposes of cl.820.226.

DECISION

69. The Tribunal remits the applications for Partner (Temporary) (Class UK) visas for reconsideration, with the direction that the applicants meet the following criteria for Subclass 820 (Spouse) visas:
 - Public Interest Criterion 4020 for the purposes of cl.820.226 of Schedule 2 to the Regulations.

Margie Bourke
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s.5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...